JOAN LIEBERMAN

IBLA 82-1000 Decided December 6, 1984

Appeal from decision of the Colorado State Office, Bureau of Land Management, dismissing protest against issuance of oil and gas lease C-30456.

Affirmed.

1. Mineral Leasing Act: Citizenship -- Oil and Gas Leases: Applications: Filing

   Where a successful United States corporate applicant for a simultaneous oil and gas lease is wholly owned by another United States corporation, which may have stockholders with foreign citizenship of a class prohibited by 30 U.S.C. § 181 (1982), the subsidiary corporation is not barred from holding Federal oil and gas leases in the absence of proof that a controlling interest in the parent company is owned by the prohibited class of owner.

2. Administrative Procedure: Burden of Proof -- Appeals -- Rules of Practice: Appeals: Burden of Proof

   The burden to prove a BLM decision erroneous is upon the appellant, where her appeal is based upon allegations that the first-drawn lease applicant is disqualified to hold a Federal lease.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant; Frank P. Saponaro, Esq., C. Stephen Angle, Esq., Washington, D.C., for Grace Petroleum Corporation; William R. Murray, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joan Lieberman appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated May 28, 1982, dismissing her protest against the issuance of oil and gas lease C-30456 to Grace Petroleum Corporation (Grace Petroleum). Grace Petroleum was the first-drawn lease applicant in the July 1980 simultaneous oil and gas lease filing. Appellant's application received second priority. Her protest is based upon a contention that Grace Petroleum is ineligible to receive a mineral lease from BLM "because it is a wholly owned subsidiary of a corporation which has alien stockholders who are citizens of countries which deny the privilege of holding interests

in government issued leases to United States citizens" (Notice of Protest dated September 27, 1980).

The Mineral Leasing Act, as amended, provides, in pertinent part, that Federal land may be leased to

> citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof * * *. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

30 U.S.C. § 181 (1982). Departmental regulations implementing the Act limit Federal lease ownership to "citizens of the United States; associations (including partnerships) of such citizens, corporations organized under the laws of the United States or of any State or territory, thereof, or municipalities." 43 CFR 3102.1(a) (1981). Further, the regulations provide, concerning alien ownership of leases, that "[l]eases or interests therein may be acquired and held by aliens only through stock ownership, stock holding and stock control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States." 43 CFR 3102.1(b) (1981).

43 CFR 3102.1(b) was changed in 1982 to provide at 43 CFR 3102.2 (1982):

> Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control; and only if the laws, customs or regulations of their country do not deny similar or like privileges, to citizens or corporations of the United States. A list of those countries which have been determined to provide "similar or like" privileges is available from [BLM].

BLM first determined to maintain a list of countries which do provide American lessees "similar or like privileges," 47 FR 8545 (Feb. 26, 1982), then determined instead to provide a list of those countries which do not (47 FR 27623 (June 25, 1982), 48 FR 33648 (July 22, 1983)). See 43 CFR 3102.2.

The BLM case file contains an extract from a 1979 Securities and Exchange Commission report for W. R. Grace & Company. This material shows Grace Petroleum to be a Delaware corporation wholly owned by W. R. Grace & Company, a Connecticut corporation. Other material appearing in the BLM file indicates that, in 1979, 28.4 percent of W. R. Grace & Company corporate common stock was owned by Friedrich Flick Industrieverwaltung of Duesseldorf, West Germany, and that in previous years, less than 10 percent of the corporation's stock was held by persons at foreign addresses. Materials in the record indicate that West Germany accords "like" privileges to American lessees.

[1] Appellant has submitted a list of foreign countries where W. R. Grace & Company shareholders allegedly reside together with a 1977 BLM listing of nations considered not to be within the prohibition of 30 U.S.C. § 181 (1982). The record on appeal makes it appear likely that citizens of countries which do not extend reciprocal leasing privileges to United States citizens may possibly have sometime owned some stock in W. R. Grace & Company. There is, however, no proof offered that any citizen of any foreign country is a shareholder is Grace Petroleum, nor is there proof that any of the stockholders of W. R. Grace & Company having foreign addresses were ever in the class of person prohibited by 30 U.S.C. § 181 (1982) from ownership of an interest in a Federal lease.

In No Oilport! v. Carter, 520 F. Supp. 334 (W.D. Wash. 1981), appeal pending sub nom. No Oilport! v. Reagan, Civ. No. 81-3438 (9th Cir. order entered staying proceedings on appeal June 3, 1982, pending result of related litigation), a decision which is instructive here, the eligibility of a pipeline company to obtain a right-of-way across Federal lands was challenged based upon the requirement of 30 U.S.C. § 185(a) (1982) that a successful right-of-way applicant must possess the qualifications provided for by 30 U.S.C. § 181 (1982). In No Oilport!, supra, the country of Kuwait held stock in Getty Oil Company, which company owned 100 percent of the stock of Western Crude, Inc., which in turn owned 26 percent of the stock of the corporate pipeline right-of-way applicant. The court, assuming Kuwait was a "citizen" of a country which did not reciprocate ownership privileges for its oil leases to American citizens, determined Kuwait did not own an interest in the pipeline company by way of "stock ownership, stock holding or stock control." 520 F. Supp. at 359-60. Construing the statutory prohibition against ownership of an interest in a Federal lease, the No Oilport! court analyzed the words "stock ownership, stock holding, or stock control," appearing in section 181, reasoning that, despite foreign ownership of stock in a parent corporation, there was no prohibited ownership interest in the right-of-way permit held by the pipeline company:

> Clearly, Kuwait does not own an interest in the permit by way of "stock ownership"; Kuwait does not own stock in NTPC [the pipeline company]. Nor does Kuwait own an interest in the permit by way of "stock holding or stock control." Both of these terms imply indirect control over the corporation which holds the permit, or at least indirect control over shares of stock in the corporation which holds the permit. It has not been contended, and certainly not shown, that Kuwait's small fractional ownership in Getty Oil Co. results in such control. Under the facts presented, Kuwait does not "own" any interest in the permit.

520 F. Supp. at 360. Following this line of reasoning, only a prohibited ownership interest in the company holding the lease, in this case the subsidiary Grace Petroleum, would be disqualifying.

[2] Here, appellant has failed to show the existence of any prohibited interest in Grace Petroleum so as to bar lease issuance. At best, she has shown the possibility that such an interest prohibited by section 181 might have been held sometime. This approach seeks to shift the burden to disprove

appellant's allegations to the successful first-drawn applicant. Besides posing nearly insurmountable practical problems of proof, such an approach violates the general rule in administrative proceedings which places the burden of proof upon the proponent of a rule. As was observed in Howard J. Hunt, 80 IBLA 396, 397 (1984), a case where the appellants asserted the existence of prior mining claim locations without offering to prove their existence, "[w]hen a party appeals a BLM decision, it is the obligation of the appellant to show that the determination is erroneous." In this case, as was the case in Hunt, supra, appellant has merely alleged the disqualification of Grace Petroleum without offering to show facts to establish the basis for her complaint. 1/ Her appeal is therefore denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ Appellant's reliance upon two 1962 memoranda of the Associate Solicitor, Public Lands, explaining the provision of 30 U.S.C. § 181 (1982) here at issue is apparently misplaced, since these opinions concern the situation, not shown to exist here, where foreign citizens own stock in the Federal lessee itself.